STATE OF MICHIGAN

COURT OF APPEALS

In re MLB, minor.

LINDA and HOWARD BALLMAN,

Petitioners-Appellants,

v

MICHIGAN CHILDREN'S INSTITUTE,

Respondent-Appellee.

UNPUBLISHED
October 13, 2009

No. 292110
Branch Circuit Court
Family Division
LC No. 09-000007-AM

Before: Talbot, P.J., and Wilder and M. J. Kelly, JJ.

PER CURIAM.

Petitioners Linda and Howard Ballman appeal as of right the trial court's order, which denied their motion under MCL 710.45(2) to determine whether the decision by respondent Michigan Children's Institute (MCI) to withhold consent to adoption was arbitrary and capricious. For the reasons stated below, we affirm.

Under MCL 710.45(2), a person who has filed a petition to adopt a state ward and has not received consent from the MCI may file a motion in family court to challenge the denial of consent. *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008). A trial court must affirm a decision by the MCI superintendent to withhold consent to adoption unless there is clear and convincing evidence that the decision was arbitrary and capricious. *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994). In this context, whether the trial court properly applied the standard is a question of law reviewed for clear legal error. *In re Keast*, *supra* at 423.

In reviewing this case, our focus is not on what reasons existed to authorize the adoption, but is instead on the reasons given by the MCI Superintendent for withholding consent. *In re Cotton*, *supra* at 185. In withholding consent to adoption from petitioners, the superintendent noted his concerns: past allegations of sexual abuse of petitioners' daughters, past allegations of domestic violence by Howard against Linda, and Howard's alcohol abuse. To the extent that petitioners challenge the veracity of those allegations, the focus of the hearing under MCL 710.45 was not whether the superintendent made the "correct" decision, or whether the trial court would have decided the issue differently, and it was not an opportunity for petitioners to argue why the consent should have been granted. *In re Keast*, *supra* at 435 n 10. Significantly, by attempting to refute the veracity of the allegations relied on by the superintendent, petitioners

improperly sought de novo review of the superintendent's decision. *In re Cotton*, *supra* at 184. Yet the superintendent explained that the truth or falsity of the allegations was not by itself dispositive; rather, he noted that the existence of the allegations warranted consideration in their own right. Further, in the words of the adoption worker, those allegations demonstrated serious dysfunction with petitioners' family. Here, the superintendent concluded that petitioners' home presented an unacceptable risk, and he articulated good reasons to support this conclusion; thus, his decision to withhold consent to adoption was not arbitrary and capricious. *Id.* at 185 ("[I]t is the absence of any good reason to withhold consent, not the presence of good reasons to grant it, that indicates that the representative was acting in an arbitrary and capricious manner."). Ultimately, petitioners failed to carry their burden by establishing by clear and convincing evidence that the superintendent's decision was arbitrary and capricious. *Id.* at 184. As such, the trial court's decision to deny petitioners' motion to review the superintendent's decision was not clearly erroneous. *In re Keast*, *supra* at 423.

In reaching our conclusion, we reject petitioners' assertion that the superintendent's failure to conduct an independent investigation rendered his decision arbitrary and capricious. The record reflects that suitable investigations and assessments were conducted of the interested parties, as well as psychological evaluations of petitioners, and that the superintendent reviewed the requisite information in making the ultimate decision. There is no requirement that the MCI superintendent conduct an independent investigation; rather, the superintendent does not act arbitrarily or capriciously by rendering a decision based on the evidence collected during the course of an investigation. *In re Cotton*, *supra* at 186.

Petitioners also complain that the superintendent's consent to adoption decision included language indicating that a more detailed explanation of his reasoning regarding the basis of his decision would be forwarded to petitioners, but no such report was ever received. The language used by the superintendent in his decision certainly raised an expectation that petitioners would be receiving additional documentation providing a more detailed explanation for the superintendent's decision to withhold consent to adoption. While the superintendent could have used more precise language in the decision or provided additional information, any misleading language in this regard is not a basis for reversal.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Kelly